

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

KENNETH E. SAVAGE, JR.,
PLAINTIFF,

VS. NO. 2:14-cv-02057-STA-dkv

FEDERAL EXPRESS CORPORATION,
D/B/A FEDEX EXPRESS, FEDEX
CORPORATION EMPLOYEES' PENSION
PLAN, FEDEX CORPORATION RETIREMENT
SAVINGS PLAN,

DEFENDANTS.

VIDEO DEPOSITION

OF

JOHN MAXWELL

JULY 28, 2015

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1 The video deposition of JOHN MAXWELL
2 is taken on this, the 28th day of July, 2015,
3 on behalf of the Plaintiff, pursuant to notice
4 and consent of counsel, beginning at
5 approximately 12:05 p.m. at FedEx World
6 Headquarters, 3620 Hacks Cross Road, Building
7 B, Memphis, Tennessee.

8 This video deposition is taken
9 pursuant to the terms and provisions of the
10 Tennessee Rules of Civil Procedure.

11 All forms and formalities, including
12 the signature of the witness, are waived, and
13 objections alone as to matters of competency,
14 irrelevancy and immateriality of the testimony
15 are reserved to be presented and disposed of at
16 or before the hearing.

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I N D E X

Direct Examination	
By Mr. Napiltonia.....	6
Cross Examination	
By Mr. Reed.....	85

E X H I B I T S

	PAGE
Exhibit 1 June 16, 2006 Letter to Captain David Webb From John D. Maxwell.....	17
Exhibit 2 Settlement Agreement.....	70
Exhibit 3 March 13, 2013 Letter To U.S. Department of Labor From Arris Reddick Murphy.....	75

	PAGE
COURT REPORTER'S CERTIFICATE.....	92

1 A. But I'm familiar with the -- how it
2 works generally.

3 Q. Okay, the process. Okay. So, is it
4 fair to say you handled more transactional work
5 on the corporate side?

6 A. Not so much. I mean, we have a
7 Business Transactions Group that does most of
8 that stuff. I mean, I think what I do is -- 90
9 percent of my time is spent working with pilots
10 in all manner of their employment here. So, I
11 mean, Labor Relations is the focus, but my
12 group and I, we negotiate the labor contracts
13 with the pilots, we give the corporation legal
14 advice as to how to apply those agreements. We
15 oversee all that. We handle the Grievance and
16 Discipline Administration process, those kind
17 of matters, so not really transactional in a
18 business transaction sense, but just labor law
19 work.

20 Q. Okay. I understand. Nevertheless,
21 you understand you're here today under oath no
22 different than if we were in court in front of
23 a judge?

24 A. Sure. Of course.

1 Q. And -- and how many years do you have
2 with FedEx?

3 A. I'll finish twenty-two in October.

4 Q. That's a long time.

5 A. That's a long time.

6 Q. All right. You touched on it a
7 little bit earlier, but if you could just
8 expand on what roles you've had at FedEx and
9 just starting from, you know, when you began
10 twenty-two years ago --

11 A. Sure.

12 Q. -- and bring me forward. You don't
13 have to go into each, you know, job
14 description, but if you could just state what
15 that job was.

16 A. Sure. I -- I started in an entry
17 level position called Staff Attorney
18 something-or-other. I can't remember what the
19 exact title was. Progressed through the career
20 progression. There's sort of a career
21 progression sequence that you go through. Was
22 made Managing Attorney in the middle to late
23 '90s, then Managing Director in 2001 or 2002,
24 and then Vice-President in 2010, and so, in

1 terms of duties, I mean, there's an --
2 obviously, there's an ascending level of
3 responsibility and span that -- you know, that
4 occurs during that period of time.

5 Q. Let's start with 2010 as the
6 Vice-President. Is that the position you hold
7 today?

8 A. That is the position I hold today.

9 Q. Okay.

10 A. And, so, really, I -- I mean -- I --
11 I think I -- I tried to describe the duties
12 that I have in that position. There's -- I --
13 I -- there's a couple that I missed. Like I
14 said, 90 percent of the work has to do with
15 dealing with the pilots. There's 10 percent --
16 and here's what my group does underneath all
17 that. Okay? There's -- most of the people are
18 engaged in the matters that I just talked
19 about: Negotiating pilot contracts, giving
20 legal advice to the company on how to apply
21 those contracts, managing and -- and trying the
22 cases that occur in the -- the -- both the
23 grievance side of the arbitration process, as
24 well as the Contract Admin -- contract side.

1 There's a subset of my group that is
2 responsible for delivering pilot healthcare
3 benefits and liaising with -- with the -- the
4 retirement function, which is not in my shop,
5 but we liaise with those people. Then there's
6 a separate group which focuses on -- which is
7 smaller and which focuses on employee and
8 management training and trying to ensure that
9 direct relationship with FedEx is the best
10 option for the employee, so that's sort of the
11 umbrella of -- of what -- what my group does
12 and functionally what I do, as well.

13 Q. Okay. Let me ask you. Do you know
14 how many pilots FedEx has in the company
15 worldwide?

16 A. Yeah. About 4,200.

17 Q. All right. And how about
18 domestically in the United States?

19 A. The -- well, they're all domestically
20 in the United States, except for we have a base
21 in Hong Kong and a base in Cologne. I don't
22 know the exact number. There are about --
23 let's -- let's call it 110 or 115 pilots
24 average in both those bases, so take 250 off

1 we build the pilot work rules, and I'm
2 generally aware of it just because, you know, I
3 attend -- I have to get CLEs like -- like
4 everybody else does, and so, you know, I've
5 tried to keep myself abreast of basic
6 employment law issues, although employment law
7 is not -- is not the focus of me or my group.
8 So, I'm aware of USERRA because of that, and
9 I'm also aware of it because, you know, there
10 are various parts of the Collective Bargaining
11 Agreement that we have to make sure line up, in
12 particular, the parts that have to do with
13 leaves of absence for military service and the
14 calculation of probationary periods while
15 pilots are on military service and -- and
16 also -- retirement benefits also are impacted.

17 Q. Okay. Did you have occasion, while
18 working at FedEx in any role, to deal with the
19 issue of how pilots' military service affects
20 their retirement plan contributions?

21 A. Yes.

22 Q. If you could just tell me in general
23 terms, when did you start to address that
24 issue?

1 A. Well, they -- I mean, I think the
2 biggest sort of occurrence of that -- I mean, I
3 think it's implicit in -- it's implicit in how
4 the contract works from the beginning, but, I
5 mean, I think the biggest sort of concentration
6 of that sort of discussion was in the 2006
7 timeframe when there was some debate about
8 whether the company was applying a particular
9 portion of the pilots' retirement benefit,
10 called the B-Plan, which is a special Defined
11 Contribution Plan that only the pilots have,
12 whether we were properly calculating retirement
13 benefits in the case of short-term military
14 leaves, and there was -- there were some
15 differences of opinion about that, and after
16 that, the company changed the way that it
17 calculated the DC -- you know, the DC benefits
18 based on short-term military leaves.

19 Q. And what -- what does the term "DC"
20 refer to?

21 A. Defined contribution.

22 Q. Okay. You're talking about
23 retirement --

24 A. I am.

1 Q. All right. Let me ask you. You --
2 you testified earlier that your work group does
3 not deal with the employment law side of FedEx;
4 is that correct?

5 A. Not directly.

6 Q. Okay.

7 A. I mean, that's not our primary job
8 function. I mean, you know, we try to --

9 Q. You cross over?

10 A. -- be generally aware and -- and
11 we -- you know, we try to be -- when we spot an
12 issue, then we -- we seek counsel from the
13 company's Employment Law Group if we need it,
14 which, you know, sometimes we do.

15 Q. So, is it fair to say that at least
16 your group collaborates with FedEx's Employment
17 Law Group?

18 A. Yes.

19 Q. Is there -- so there's nothing that
20 would prohibit, for example, you, as an
21 attorney working in a different group, to pick
22 up the phone and call FedEx's Employment Law
23 Group and say, "Hey, I have a question about
24 this" and --

1 A. No.

2 Q. -- they would answer it?

3 A. They would.

4 Q. All right. Let me hand you a
5 document which I'd like to mark as Exhibit 1 to
6 the deposition.

7 (WHEREUPON, EXHIBIT NO. 1 WAS MARKED
8 TO THE TESTIMONY OF THE WITNESS AND IS
9 ATTACHED HERETO.)

10 (DOCUMENT PASSED TO THE WITNESS.)

11 Q. Sir, can you identify that document
12 for the record?

13 A. Sure. This is -- this is a letter I
14 wrote to Captain Webb, who was, at the time,
15 the -- ALPA's MEC Chairman, describing, really,
16 the matter that I just mentioned a couple of
17 questions ago.

18 Q. Okay. I'd like you to turn to Page
19 2.

20 A. Uh-huh (affirmative response).

21 Q. Is that your signature at the bottom,
22 sir?

23 A. It is.

24 Q. All right. And if you could just

1 Q. Would this legal group be the -- the
2 group within FedEx that provided guidance to
3 the company as to what the company's
4 obligations were under USERRA regarding
5 retirement contributions?

6 A. They are -- they're essentially --
7 their focus is ERISA, and so to the extent
8 that, you know, applying ERISA correctly
9 requires some understanding of USERRA, then,
10 yes, I think legal advice would come from
11 there. The other source that it would
12 primarily come from is the Employment Law Group
13 here at Express, so I think those two groups
14 would collaborate to provide the bulk of legal
15 advice and -- and I, our group, would then
16 provide the legal advice of how to integrate
17 that all in the contract and deal with the
18 pilots' Union about it.

19 Q. Okay. Were -- this legal group that
20 deals with retirement benefits and the
21 Employment Law Group, were they around in 2006?

22 A. They were.

23 Q. It also states in Paragraph Number 2:
24 "...the company understands USERRA to require

1 that B-Plan contributions be made for pilots
2 who return to work following periods of
3 qualifying military leave even though they are
4 not paid while taking that leave." Do you see
5 that, sir?

6 A. I do.

7 Q. To the best of your recollection,
8 when did FedEx come to know this?

9 A. I think it happened during this
10 period of time. Well, let me back up and say
11 you kind of have to -- well, I think the
12 company always knew that -- that B-Plan
13 contributions needed to be -- that B-Plan
14 contributions needed to be made during some
15 periods of military service. Okay? So I think
16 we always did that when it -- we split the
17 world, for military service and pilots, into
18 long-term military leaves and short-term
19 military leaves, so I think there will always
20 be plan contributions made whenever the
21 underlying leave was a long-term military
22 leave. In the short-term military leave,
23 here's -- here's how -- here's how it worked,
24 and you kind of have to understand, a little

1 bit anyway, about how pilot schedules are
2 built, because they're different from everybody
3 else's. I mean, just to use a simple example,
4 a pilot's schedule for the month is called a
5 "line." It's his line of time, and so in the
6 short-term military leave situation -- let me
7 back up. In a long-term military leave
8 situation, the employee is shown in the system
9 as being inactive. He's not at the company.
10 He's off doing something else for some longer
11 period of time. In 2006, it was, I think, 15
12 days. It's since made its way up to 31 days.
13 Whatever the line of delineation is, there are
14 short-term leaves and long-term leaves.

15 In a short-term leave, the pilot is
16 active in the system and show -- and so the
17 system doesn't show any break in service at
18 all, and how -- how you handle military leaves,
19 then -- I mean, an essential requirement of
20 which is that the pilot's allowed not to do the
21 work for FedEx while he's doing his military
22 service is that any conflicting activities on a
23 pilot's line are -- are dropped off that line,
24 the pay goes away with the -- with the

1 requirement to work, and then he flies whatever
2 remaining portion of that line is left. The --
3 the -- the nuance that was being studied at
4 that point in time was -- had to do with how
5 and when pilots get B-Plan contributions for
6 short-term -- for short-term leaves.

7 There's one more thing you need to
8 know in order to understand what was going on,
9 and that is that all the time there is a -- I
10 mean, today, if we sampled it today and looked
11 out there, we would find what we call "open
12 time," and open time is trips that need to be
13 flown, and "trip" is just the stringing
14 together of flights for pilots. Okay? There
15 are trips that need to be flown that are not
16 currently assigned to any pilot and, hence,
17 those trips are open. Although we have lots of
18 qualified pilots to fly those open trips,
19 pilots don't have a per se right to go pick
20 them up and fly them even if their schedule
21 would -- would support it, and there are lots
22 of rules that say how you generate an
23 entitlement to pick that trip up, but one of
24 the major ways is that you have credit in what

1 we call your "makeup bank," so -- and here's
2 the reason that that is important for military
3 leave. When a military leave in a short-term
4 situation conflicts with a trip, then that --
5 the credit hours for that trip drop into the
6 pilot's makeup bank, and that gives the pilot
7 the right to fly back those hours at some later
8 time whenever it suits him to do so. Okay.
9 So, a normal line for a pilot might be 72
10 credit hours of work. Let's say a
11 42-credit-hour trip conflicts with military
12 leave. That 42 credit hours would then be
13 credited to his makeup bank, and he could
14 choose to fly that back as soon as he gets back
15 from military leave or at any point in the
16 future. And the way the system worked before
17 we did this change in 2006 is that there wasn't
18 any B-Plan contribution made when the trip
19 dropped out. We waited for the pilot to fly
20 that back, and when he flew that back, then he
21 got a B-Plan contribution at that point in
22 time. The work was done, the pay was earned,
23 and then the B-Plan contribution was made, and
24 I think that there was a debate, from a legal

1 standpoint, as to whether that was an
2 appropriate application of USERRA. At the end
3 of the day, what the company decided to do was
4 say -- and they were concerned about the fact
5 that that meant that we were not making B-Plan
6 contributions within 90 days after the
7 serviceman's return because it really depended
8 on when he flew the hours back, not on how many
9 days had elapsed since the conclusion of the
10 leave, so the company decided that the better
11 application of USERRA was to make the B-Plan
12 contribution -- on my example, the 42-hour
13 trip -- shortly after the trip was dropped,
14 certainly within 90 days, regardless of when,
15 if ever, the pilot ever flew the trip back, so
16 that's the change that was made in 2006 when it
17 comes to -- and, again, it was about short-term
18 military leaves and the B-Plan.

19 Q. Okay. Thank you for that --

20 A. Sorry.

21 Q. -- very good explanation. No, I
22 appreciate it. Let me ask you. When did --
23 how many people were involved in -- you
24 testified earlier that this nuanced -- this

1 Q. When you were involved with this
2 issue in regard to the pilots' B-Plan funds
3 and -- and the fact that some of the
4 calculation in regard to short-term military
5 leave and their military service, this issue
6 with the calculations --

7 A. Uh-huh (affirmative response).

8 Q. -- were you involved in that?

9 A. Yes.

10 Q. You testified earlier there were some
11 significant resources devoted to it, correct?

12 A. Yes.

13 Q. Okay. Did you have any
14 communications with the FedEx -- you know, the
15 Employment Division or the Benefits Division or
16 anybody? Did you raise the issue that maybe
17 this affected other employees who also served
18 in the National Guard and Reserves?

19 A. No, because, I mean, this is pretty
20 pilot-specific. I mean, it has to do with
21 trips dropping off a pilot's line and whether
22 they fly those trips back and when the credit
23 ought to happen and so forth, and so, in my
24 view, that's just -- that's a -- that's a

1 specific sort of employment situation and
2 applies to crew members, so, it -- I wouldn't
3 have seen -- I don't see an analog I guess is
4 what I'm saying.

5 Q. You don't see that there could be a
6 connection between -- if I understand you
7 correctly, between the fact that some of FedEx
8 pilots who served in the military, retirement
9 accounts were not properly credited when they
10 performed military service, and other employees,
11 for example, mechanics' retirement accounts who
12 also served in the military? You -- you -- you
13 didn't see a connection?

14 A. I don't -- I -- I didn't and I don't
15 because it's not my understanding of how -- I
16 mean, it seems like that's a specific thing to
17 pilot work, that there are trips that drop out
18 in conflict and that can be flown back later or
19 not.

20 Q. And were there any discussions with
21 anybody at FedEx, with the exception of FedEx's
22 attorneys, in regard to whether or not
23 employees at the company who all -- who served
24 in the National Guard and Reserves, whether

1 their retirement benefits were being properly
2 calculated?

3 A. Not that I recall, and I was focusing
4 on pilots.

5 Q. I understand that. I'm just --
6 I'm -- I'm just asking you, quite pointedly,
7 whether or not you recall any discussions
8 across the board that possibly this could
9 affect other service members?

10 A. I do not.

11 Q. As you sit here today, do you know
12 whether or not other employees who served in
13 the National Guard and Reserves, whether or not
14 their retirement accounts were affected?

15 A. I don't.

16 Q. Let me ask you. In regard to the
17 pilots' Traditional Benefit Plan --

18 A. Uh-huh (affirmative response).

19 Q. -- do you know if any of -- if there
20 was any discussion, whether or not that was
21 affected by military service? So the pilots
22 have different plans you testified --

23 A. Yes. Yes.

24 Q. -- earlier? One is the B-Plan, which

1 FedEx has, he can't testify to that.

2 Proceed with your answer.

3 A. Would you mind saying it again?

4 Q. Sure. Sure. What I'm asking you is,
5 during the time that -- I mean, you testified
6 earlier that you -- that you and -- strike
7 that -- that FedEx had devoted significant
8 resources to looking at this issue in regard to
9 the B-Plan fund and service members who -- who
10 are pilots at FedEx and their retirement
11 accounts?

12 A. Yes.

13 Q. Okay. And you also testified earlier
14 that there was some discussion in regard to the
15 Traditional Benefit Plan and how it may have
16 affected pilots' retirement benefits, correct?

17 A. Yes.

18 Q. Okay. There were discussions about
19 it?

20 A. Yes.

21 Q. And there were discussions with the
22 Union about that?

23 A. Those are the discussions that I'm
24 recalling is the ones with the Union.

1 Q. Okay.

2 A. Yeah.

3 Q. All right. Can you explain -- since
4 they were with the Union --

5 A. Uh-huh (affirmative response).

6 Q. -- what was the substance of those
7 discussions in regard to the Traditional
8 Benefit Plan and whether or not it affected,
9 you know, pilots who served in the National
10 Guard and Reserves?

11 A. Yes. It -- it could affect both
12 B-Plan contributions and potentially the
13 Traditional Pension Benefit, but, honestly,
14 unlikely to affect the Traditional Pension
15 Benefit. You'd still have to run the -- you'd
16 still have to gather the data to make sure, but
17 the -- let me do an example to sort of
18 illustrate what the issue was. Let's say a
19 military pilot is out for four years, and
20 during those -- during that four-year period of
21 time, it's an active period of time in terms of
22 the company's posting new positions and
23 training and so forth, so during that period of
24 time, the pilot would -- by "posting," I mean

1 the company puts out a bid for a certain number
2 of new positions, and pilots bid on those
3 postings by their seniority. Okay? So, if
4 you're out during -- for four years and there's
5 a significant amount of -- number of new
6 positions that are being created or -- or are
7 available for whatever reason, then what could
8 happen is -- the -- the way we worked the
9 system was when the pilot came back from
10 military leave, he got a chance to look at all
11 the postings that happened during his absence
12 and he got to choose the crew position that his
13 seniority allowed him to hold, so -- well,
14 that's pretty much it. Whatever seniority
15 he -- that -- that -- that he could hold, he
16 was assigned to train for that crew position,
17 and when he completed training for that crew
18 position, then that would be -- his pay rate
19 going forward would be that, but the pay rate
20 that was applicable to his period of military
21 absence would be the one he held when he went
22 out, so the Union said that while the hourly
23 rate shouldn't just apply from when he got back
24 from military service and going forward, but it

1 should reach back into the period of military
2 service for some period of time. There was,
3 inside that period, then, a difference of --
4 well, there were some who argued that if the
5 pilot had had multiple opportunities to move,
6 then there might -- then they argued that there
7 should be multiple hourly-rate changes. I
8 mean, I think the company's position was that
9 there are a lot of things that go into
10 determining whether a pilot actually achieves a
11 new crew position. One of them is, "Do you
12 have the seniority to hold it?" That's
13 objective, but there -- there are a couple of
14 subjective ones, as well, the biggest one being
15 whether the pilot would actually have bid for
16 that crew position. And pilots very, very
17 often, I would say more often than not, do not
18 bid for a promotional crew position when
19 they're first able to hold it. They often wait
20 until they have a certain level of seniority,
21 because if they bid it when they can very first
22 hold it, they have very little control over
23 what their schedule is, so many choose to wait
24 until they're at whatever level of seniority in

1 that crew position that they -- that they want
2 in order to manage their own schedules. And so
3 our view was, there's no way to tell what a
4 pilot would have done in the middle of his --
5 you know, at the period of time that he
6 happened to be serving military, whether he
7 would have bid for it or not. And then the
8 third element was, you know, there's always a
9 question of whether you can bid for a new crew
10 position, but not everybody passes training, so
11 our view was that the crew status change wasn't
12 reasonably certain, which I understood to be a
13 term of art in USERRA, and as a result of that,
14 that it -- that period of military service
15 would have applied to at the hourly rate that
16 he had when he went out and that the new hourly
17 rate would be applied, like it does for
18 everybody else, when he came back, passed
19 training, went forward. As I said, the Union
20 thought that there should be some reaching back
21 of that, and, as part of an overall settlement
22 of a bunch of issues, we agreed to look back
23 to -- to one crew status change. Basically, we
24 said, "If you come back and you choose a new

1 crew status, we will -- and you pass training
2 for that crew status, we will look back into
3 your military leave period and -- and determine
4 what is the first point at which you could have
5 held that crew status, add the training
6 period," and then that's how we would apply the
7 hourly rate. So the hourly rate -- the hourly
8 upgrade -- it's not always an upgrade, but
9 usually it is -- would apply from that point
10 forward and the rest of the military service
11 period would have the hourly rate that was
12 applicable to the pilot when he went out, so
13 that is part of the imputed earnings
14 calculation, which would have an impact on the
15 B-Plan for sure, and it could have an impact on
16 the pension plan -- on the Traditional Pension
17 Benefit, although that really depends more
18 on --

19 Q. The factors you just -- the factors
20 that you just testified to, correct, in regard
21 to whether or not it'd be reasonably certain
22 and those sorts of things?

23 A. I'm sorry?

24 Q. Because I'm asking you specifically

1 the Union and it would have been available for
2 any line pilot to -- to look at.

3 Q. Okay. Can you spell your
4 supervisor's name for the record?

5 A. Yeah. M-A-L-I-N-I-A-K.

6 Q. These contracts with the pilots'
7 Union you have referred to, are they business
8 records?

9 A. The Collective Bargaining Agreements?

10 Q. Yes, sir.

11 A. I don't know what you mean by
12 "business records." I mean, they're --

13 Q. Are they kept in the normal course of
14 business at FedEx?

15 A. Yes.

16 Q. All right. Is there a custodian of
17 records that keeps those documents?

18 A. Well, I mean, again, a term of art.
19 I'm not sure that I'm -- we have copies of the
20 Collective Bargaining Agreement.

21 Q. Okay. In your division?

22 A. Yes.

23 Q. All right.

24 A. And we distribute copies of the

1 use the term "pilot's Union," will that be
2 okay?

3 A. That will be fine.

4 Q. You understand what I mean?

5 A. I do.

6 Q. Okay. Sir, have you had a chance to
7 review this document?

8 A. I have.

9 Q. Does this accurately reflect the
10 document that was entered into by FedEx and the
11 pilots' Union?

12 A. It does.

13 Q. All right. Just generally speaking,
14 what's this Settlement Agreement about?

15 A. It has to do with how to handle crew
16 status changes in the context of calculating
17 imputed earnings when there's a military leave
18 that occurs.

19 Q. Okay. And let -- let me ask you a
20 question. In Paragraph 3 on the second page,
21 do you see where it says "A-L-P-A Release of
22 Claims?

23 A. I do.

24 Q. What is a Release of Claims?

1 A. Yes.

2 Q. Was Ms. Murphy around and involved in
3 any of the discussions in 2006?

4 A. I don't believe so.

5 Q. How about in 2008 when the Settlement
6 Agreement was signed?

7 A. I don't recall, but the discussions I
8 had that I recall were with Ms. Wells.

9 Q. Okay. Let me ask you. Why did it
10 take two years and six months or more for FedEx
11 to enter into an agreement formally with the
12 pilots' Union?

13 A. Which agreement are you referencing?

14 Q. Exhibit 2 to your deposition. It's
15 dated December 2008. The first letter that --
16 the only letter that I have, June of 2006,
17 that's over -- over two years and six months
18 when there's actually a formal agreement. I'm
19 just curious as to why it took so long.

20 A. Well, this Settlement Agreement only
21 has to do with the idea of whether crew status
22 changes ought to be imputed during a period of
23 military absence, and there was a difference of
24 opinion between the company and the Union as to

1 whether that ought to be done at all.

2 Q. Okay. So, it -- there was -- if I
3 understand you correctly, there were some
4 negotiation for about two years and six months
5 regarding this issue?

6 A. I don't remember when the issue was
7 first raised, so I don't know if it was two
8 years and six months. My recollection is that
9 it was raised, at least initially, in the
10 aftermath of the company deciding to change the
11 way it calculated B-Plan benefits when they
12 were on a short-term military leave, so that --
13 that -- all that event, I think, led some at
14 the Union to ask other questions, and my
15 recollection is that how we handle crew status
16 changes is one of the things that was raised at
17 the time, but we had a difference of opinion
18 with the Union as to what was the proper
19 treatment.

20 Q. Okay. And I believe you testified
21 earlier that -- and, again, this is going to
22 be, you know, fairly simple, based on my
23 understanding, but crew status changes for a
24 pilot have an increase in pay depending upon

1 really, about how mechanics get their work and
2 are assigned it.

3 Q. Sure. And, again --

4 A. So, "I don't know" I think is the
5 answer.

6 Q. Okay. And I'm just -- I guess you've
7 answered my question.

8 A. Okay.

9 Q. And that is, short-term military
10 leaves can be found in regard to pilots in
11 Section 25?

12 A. Yes, sir.

13 MR. REED: On the Collective
14 Bargaining Agreement, right?

15 THE WITNESS: Yes.

16 BY MR. NAPITONIA:

17 Q. Let me ask you this in -- in -- in
18 general terms as it applies to the pilots. I
19 believe you testified earlier that short-term
20 military leaves were not captured, correct?

21 A. Well, they were not captured -- they
22 were not captured in the way that we ultimately
23 decided they ought to be captured. They --
24 they would, for instance, be captured if -- if

1 you recall the discussion about the 42-credit
2 hour trip dropping into the makeup bank and
3 then being -- being flown back, they would be
4 captured in that instance, which happens very,
5 very often. I mean, very often military
6 servicemen end up flying back hours that drop
7 into their makeup bank that got into their
8 makeup bank going to military service, so, in
9 all the cases where pilots flew back the hours
10 that dropped into the makeup bank --

11 Q. Uh-huh (affirmative response).

12 A. -- B-Plan contributions would have
13 been made on those. The circumstance where
14 they would not have been made would be if they
15 didn't fly those hours back at all or if they
16 did fly them back and it was outside the 90-day
17 window, then the B-Plan contribution would not
18 have been made inside the 90-day window but
19 outside it.

20 Q. Okay. But never -- nevertheless, am
21 I correct that some short-term military leaves
22 were not properly calculated?

23 MR. REED: Objection. Asked and
24 answered. He just answered that.

1 BY MR. NAPITONIA:

2 Q. You can answer the question.

3 A. We decided the better application
4 would be to make B-Plan contributions
5 regardless of whether the pilot ever flew that
6 back.

7 Q. And that was after negotiations with
8 the Union, correct?

9 A. Well, the B -- the B-Plan part on --
10 the original B-Plan part where the short-term
11 really wasn't a matter of negotiations, that
12 was a matter of us agreeing that there was an
13 issue and determining how we were going to
14 change it and then communicating with the
15 pilots' Union about it. The -- the
16 negotiations with the Union happened with
17 regard to whether to impute crew status changes
18 during a longer period of military absence --

19 Q. Okay.

20 A. -- for the purpose of calculating
21 imputed earnings.

22 MR. NAPITONIA: Let's go off the
23 record for a second.

24 THE VIDEOGRAPHER: Going off the

1 that I know of in particular than maybe one --

2 Q. Okay.

3 A. -- one weekend or a period of four
4 days.

5 Q. Okay. All right. Thank you. I have
6 no further questions.

7 A. Okay.

8 MR. REED: I actually have a couple
9 just to clear up the record.

10 CROSS-EXAMINATION

11 BY MR. REED:

12 Q. Mr. Maxwell, do you remember your
13 testimony when you were talking about
14 discussions that you had with the Union about
15 whether or not military status impacts the
16 Traditional Pension Plan?

17 A. Yes.

18 Q. Okay. Were those discussions about
19 crew status?

20 A. They were about whether to impute a
21 crew status change during a period of long-term
22 military service.

23 Q. Okay. And so that was -- that was a
24 discussion you had with -- with the Union was

1 solely about crew status?

2 A. The -- I think you said about the
3 negotiations which led to the Settlement
4 Agreement were about whether to impute a crew
5 status change.

6 Q. And, for the record, I don't think
7 you described "crew status" earlier. Can --
8 can you generally describe what that means?

9 A. A crew status is a pilot's aircraft
10 and seat position, so, for example, Wide Body
11 First Officer is a crew status. Actually,
12 MD-11 First Officer more technically is a crew
13 status, but for pay purposes, it only matters
14 that it's a Wide Body.

15 Q. Okay. So, unless you're a pilot with
16 FedEx, crew status doesn't have -- let me
17 rephrase that. A non-pilot employee doesn't
18 have any crew status. Is that accurate to say?

19 A. "Crew status" is -- that's accurate.
20 "Crew status" is a defined term under the
21 Collective Bargaining Agreement with the
22 pilots.

23 Q. And you -- very recently, you were
24 testifying about short-term military leave not

1 being captured for pilots. Do you remember
2 that testimony?

3 A. In some circumstances, that was true.

4 Q. Right. And, for the record so the
5 record will be clear, can you describe those
6 circumstances where short-term -- I -- I think
7 opposing counsel asked it to you like this,
8 like short-term military leave was not
9 captured. Can you explain in what
10 circumstances you're talking about? It wasn't
11 captured for pilots?

12 A. It was not captured for pilots if
13 they had a trip or activity on their line that
14 conflicted with military leave.

15 Q. You're talking about a flight?

16 A. It could be a flight, it could be a
17 reserve trip, it could be a training event, so
18 any activity that generates credit hours, but
19 it would be specific to piloting. I mean,
20 you're either flying an airplane as a pilot,
21 you're sitting on reserves as a pilot so that
22 you can fly an airplane if need be, or you're
23 in training. Any of those things can be in
24 conflict with military leave and generate

1 credit hours into your makeup bank, so the
2 specific circumstance that I was talking about
3 was one of those events conflicts with
4 short-term military leave, drops into the
5 makeup bank and then is not subsequently flown
6 back, or is subsequently flown back outside the
7 90-day window.

8 Q. But that issue doesn't have anything
9 to do with non-pilot employees at FedEx, does
10 it, or do you know?

11 MR. NAPITONIA: Object to the
12 question.

13 MR. REED: Okay.

14 A. No.

15 Q. What are credit hours?

16 A. Credit hours are -- credit hours are
17 the -- the measurement for units of work for
18 pilots, and there's a section for -- the
19 pilot's contract has 20-some-odd pages that
20 determine, that -- that describe how and in
21 what circumstances credit hours are credited to
22 pilots, so, if you fly a trip, there's a fairly
23 detailed formula that determines, on both the
24 schedule and an actual basis, how many credit

1 hours that trip is worth. If you sit a reserve
2 day, there is a credit-hour value associated
3 with that R-Day. If you -- if you perform a
4 training event, there's a credit-hour value
5 associated with that training event. So, in
6 order to determine a pilot's pay, you multiply
7 credit hours times the hourly rate and that
8 yields a dollar figure.

9 Q. Do non-pilot employees at FedEx have
10 credit hours?

11 A. No.

12 Q. What is a B-Plan?

13 A. The B-Plan is a Defined Contribution
14 Plan. Well, the B-Plan that we refer to as the
15 Defined Contribution Plan, that's more formally
16 known as the Pilots' Money Purchase Pension
17 Plan.

18 Q. Right, but can you -- can you kind of
19 break down the contributions? For example,
20 does -- does an employee have to make a
21 contribution? I mean, can you just describe
22 the characteristics of the B-Plan for the
23 record?

24 A. Sure. For pilots, the B -- the B --

1 the B-Plan for pilots provides that whatever
2 their pensionable earnings are, the company
3 will make a contribution equal to seven percent
4 of those earnings into a Defined Contribution
5 Plan, which is located at Vanguard, and it's in
6 the pilot's name. Those contributions are
7 limited by several different IRS limits, in
8 particular the 401(a)(17) and the 415 E-Limits.

9 Q. Does an employee have to make a
10 contribution into the B-Plan?

11 A. No.

12 Q. So, it's not an -- it's not an
13 employer match, is it?

14 A. No.

15 Q. Do non-pilot employees have a B-Plan?

16 A. No.

17 Q. Have they ever had a B-Plan?

18 A. No.

19 MR. REED: No further questions.

20 MR. NAPITONIA: Nothing further, sir.

21 Thank you.

22 THE WITNESS: Thank you.

23 THE VIDEOGRAPHER: This concludes the
24 videotaped deposition. The time is 1:48.

C E R T I F I C A T E

STATE OF TENNESSEE:

COUNTY OF MADISON:

I, TAMMY W. WENDEL, LCR, and Notary
Public, Madison County, Tennessee, CERTIFY:

The foregoing proceedings were taken
before me at the time and place stated in the
foregoing styled cause with the appearances as
noted.

Being a Court Reporter, I then
reported the proceeding in Stenotype, and the
foregoing pages contain a true and correct
transcript of my said Stenotype notes then and
there taken.

I am not in the employ of and am not
related to any of the parties or their counsel,
and I have no interest in the matter involved.

I further certify that in order for
this document to be considered a true and
correct copy, it must bear my original
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violation of Tennessee Code Annotated
39-14-149, Theft of Services.

Witness my signature this the _____
day of _____, 2015.

TAMMY W. WENDEL, LCR

Notary Public at Large
For the State of Tennessee
My Commission Expires:
February 24, 2016